

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE )  
COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 12-12324-MLW  
 )  
BIOCHEMICS, INC., JOHN J. MASIZ, )  
CRAIG MEDOFF and GREGORY S. )  
KRONING, )  
 )  
Defendants. )

**1-16-18 SUPPLEMENTAL JOINT REPORT OF THE PARTIES AND ADEC  
DIRECTED BY THE COURT'S 12-5-17 ORDER (Doc. #379)  
& THE COURT'S 12-18-17 ORDER (Doc. #390)**

The Parties and ADEC submit this supplemental joint report as directed by Par. 3 of the Court's December 5, 2017 Order (Doc. #379) and the Court's December 18, 2018 Order (Doc. #390) as follows:

**I. RELEVANT PROCEDURAL HISTORY**

**A. Relevant Court Orders**

**1. December 5, 2017 Order**

In its December 5, 2017 Order the Court directed at par. 3 as follows:

ADEC Private Equity Investments, LLC ("ADEC") shall confer with BioChemics and the SEC, and shall, by December 7, 2017, report regarding: (1) the prospects of monetizing the assets in dispute; and (2) the possibility of resolving their dispute without further action by the Court. If they are unable to resolve their dispute, the parties shall propose a schedule for future proceedings, including a briefing schedule on the issues of: (a) interpleader under 28 USC Section 1335; and (b) the court's authority to provide relief from the May 25, 2016 Modified Judgment (Docket No. 202).

December 5, 2017 Order (Doc. #379).

## **2. December 18, 2017 Order**

In its December 18, 2017 Order the Court directed as follows:

In view of [the December 7 and 12 Reports], the date to propose a briefing schedule is hereby extended to January 15, 2018. Prior to that date, the parties shall confer concerning whether developments indicate that litigation should be stayed. If not, the approach and timetable proposed by ADEC appears reasonable.

December 18, 2017 Order (Doc. #390).

## **B. Relevant Joint Reports**

### **1. December 7, 2017 Joint Report (Doc. #383)**

On December 7, 2017 the Parties and ADEC reported as follows:

BioChemics has presented to the Commission and ADEC its plan to monetize the assets so that the obligations regarding payment of the Judgment and the obligation to ADEC are satisfied in full. The present obligations to the Commission (\$17.3 Million) and ADEC (\$7 Million) total approximately \$24.3 Million. BioChemics informed the Commission and ADEC that an entity owned by the Trust is negotiating an agreement with a privately held company ("Company") for the use of the BioChemics technology that will commit the Company to pay \$20.7 million in stages by October 1, 2018, beginning with \$2 Million to be paid by December 28, 2017 into the Court Registry. In exchange for these payments, the Company will receive a non-exclusive license to use BioChemics technology for 2018. The technology being licensed will include intellectual property presently held by Inpellis.

These prospective payments by the Company will be in addition to the \$5 Million payment that will be paid into the Court as a result of the binding loan commitment for the so-called "Licensing Opportunity" previously reported to the Court. In addition, as previously reported to the Court, a Trust entity will reserve a substantial interest in an entity making use of the license and therefore will be entitled to a stream of income for that use.

These prospective payments from the Company, about which the Commission and ADEC were informed today, provide a potential opportunity for the resolution of the dispute that is the subject of ADEC's motion to intervene by providing funds sufficient to repay the Commission and ADEC in full. The Parties and ADEC discussed whether these potential transactions may resolve the dispute without further Court action on ADEC's motion. The Parties and ADEC have not yet come to a resolution on that issue, but will continue to have meetings and discussions on Monday, December 11. After having these further discussions, if the Parties and ADEC believe that a briefing schedule is needed, they will propose such a schedule to the Court on Tuesday, December 12, 2017.

12-17-17 Joint Report (Doc. #383).

**2. December 12, 2017 JOINT REPORT (Doc. #384)**

BioChemics reported as follows:

Subsequent to the December 7, 2017 Joint Report, BioChemics has informed the Commission and ADEC that an entity owned and controlled by the Trust has entered into an Agreement with the private Company referred to in the Joint Report. BioChemics also informed the Commission and ADEC that as a result of that Agreement, the Trust-controlled entity will make a \$2 Million payment on or before December 28, 2017 that the Trust will direct be paid into the Court Registry on BioChemics' behalf. Further, BioChemics informed the Commission and ADEC that, pursuant to that Agreement, the Trust-controlled entity and the private Company will make additional payments of \$20.7 million in stages by October 1, 2018 and that the Trust will direct that these additional payments shall be paid into the Court Registry.

BioChemics also has agreed to continue to inform the Commission and ADEC, on a weekly basis, the progress regarding these transactions, as well as the transactions regarding the "License Opportunity" previously reported on that are scheduled to occur by or before December 28, 2017.

In light of these prospective transactions, the opportunity that other transactions that are ongoing may mature in the near term, and the fact that the Commission and ADEC will continue to be informed of developments on a continuous basis, it is the position of BioChemics that the efficient use of resources is best served by the postponement of the date on which the parties shall propose a schedule for future proceedings, including a briefing schedule regarding the issues identified by the Court, until January 15, 2017. BioChemics believes that the limited hiatus in briefing will provide the Parties and ADEC an appropriate opportunity to evaluate

further developments and assess the need for a briefing schedule without unduly delaying the proceedings.

## **II. JANUARY 16, 2018 JOINT REPORT**

### **A. BioChemics**

As the Commission and ADEC know as detailed below, BioChemics did not make the payments, both the \$5 Million payment or the \$2 Million payment by December 28, 2017. However, as explained below, BioChemics has a reasonable basis to believe that the transactions as contemplated will take place in the near term and that it will be able to make the payments over the next three quarters as described in its December 12, 2017 Report.

The reasons for this belief are as follows:

As of the last quarter of 2017, the Trust through BioPhysics Labs LLC (BPL) a Trust entity, has established two entities which have marketable products using the BioChemics technology that are in the marketplace. One of the BPL entities has begun the manufacture and sale of a transdermal delivery system for the application to the field covered by the so-called "License Opportunity"; and the other BPL entity has a license agreement in place with a licensed compounding pharmacy that is presently compounding and dispensing product by prescription using the BioChemics technology. Both the License Opportunity product and the compounded product have been well received and the interest generated by each of the products have resulted in ongoing discussions with substantial parties in the respective fields that can result in the payments and revenue streams detailed in BioChemics December 12, 2017 Report. The compounded product has been described by certain well-experienced medical practitioners, pleased with the initial success they are having, as potentially being a transformative treatment modality that could have wide application to a range of conditions.

**License Opportunity.** Regarding the \$5 Million payment for the use of the technology for a limited purpose (the so-called "License Opportunity") the entity which gave the loan committment was not able to obtain the funding in time for the deadline. However, because it believes in the business opportunity, it has been in active discussions with the Trust to obtain that funding and consummate the intended transaction. The entity that made the committment is taking steps in good faith and demonstrating its intention to follow through on its committment by making a payment in the amount of \$100,000.00 to BPL for deposit into the Court Registry and negotiating a private placement of the entity's stock to fund the loan within the next 30 days. That payment shall be made by BioChemics as soon as it is received from the entity.

**Compounded Product.**

Regarding the \$2 Million payment, the BPL entity is in active discussions with potential manufacturing partners interested in manufacturing this compounded product at scale regarding a capital contribution that would allow the BPL entity to make the \$2 Million payment as described in the December 12, 2017 Report.

**BioChemics Payment.**

Because the payments due December 28, 2017 were not made, BioChemics is making a payment into the Court Registry this date in the amount of \$87,500.00. The payment was calculated as one-twelfth of a 15% annual interest rate on the \$7 Million payment that was not made as of December 28, 2017. This payment is in addition to the payment being made by the entity that had made the committment.

**The Schedule.**

BioChemics believes that in light of the foregoing, that the litigation should not be further delayed. BioChemics has a well-founded belief that it will perform in the near term, as

previously intended, albeit tardy. While BioChemics and the Trust will continue, without delay, all of its efforts to monetize its assets to satisfy the obligations of the Judgment and the ADEC obligation, it will also work cooperatively with the Parties and ADEC to assure prompt and efficient resolution of outstanding issues.

**B. Commission and ADEC**

In light of the current status of BioChemics' unpaid obligations, the Commission believes that briefing should continue on ADEC's pending motion. The Commission proposes that all parties file briefs on Friday, February 2 to address the Court's questions concerning interpleader and the court's ability to provide relief from the Modified Judgment, and related arguments that were made at the last hearing. The Commission further proposes that all parties file briefs responding to the other parties' briefs on Tuesday, February 27, 2018. A hearing on ADEC's motion could then be scheduled at the Court's convenience.

ADEC concurs with the Commission's proposed schedule.

Dated: January 16, 2018

Respectfully submitted,

**BioChemics:**

/s/ Jan Schlichtmann

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**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that, on January 16, 2018 a true and correct copy of the foregoing document was served on counsel for the Commission and ADEC by electronic service through the CM/ECF.

Dated: January 16, 2018

Respectfully submitted,

BioChemics,  
By its attorney

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